

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Ken Cohen, Assistant Town Administrator - 797 1030

PREPARED BY: Maria Mackie, Administrative Aide

SUBJECT: Ferncrest Utilities Bulk Water & Sewer Agreement

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT TO MODIFY BULK WATER AND SEWAGE USER AGREEMENT BETWEEN THE TOWN OF DAVIE AND FERNCREST UTILITIES TO PROVIDE BULK WATER AND SEWAGE SERVICE; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: Recently, Ferncrest Utilities, Inc. received notification from the Broward County Health Department stating they are “in violation of Rule 62-550.310 (3), Florida Administrative Code which establishes the maximum contaminant levels (MCL’s) for total trihalomethanes (TTHM’s) and haloacetic acids (five) (HAA5’s) as 0.080 milligrams per liter (mg/L) and 0.060 mg/L, respectively.” In order for Ferncrest Utilities to correct the problem, a significant amount of new equipment will have to be purchased and installed. It will take a considerable amount of time to complete the project and correct the problem. During the time period that this will take place, Ferncrest is requesting that the Town of Davie enter into a "Memorandum of Agreement" (Exhibit A) to provide water service to the entire Ferncrest service area. We currently have an agreement with Ferncrest (Exhibit B) to provide up to 200,000 gallons per day, but would have to increase this to 742,000 gallons per day. The Town of Davie Utilities does not currently have the excess capacity to provide this service to Ferncrest. The agreement will be contingent on the South Florida Water Management District temporarily transferring Ferncrest’s wellfield withdrawal allocation to Davie for the length of the agreement, (30 months).

The major changes to the original agreement are:

- 1) Removal of the \$0.25 discount. Ferncrest Utility will pay the same rate charged to Town of Davie customers. Continuation of this discount would result in a \$169,375 discount over the 30 month life of the amendment.
- 2) The maximum daily water consumption will increase from 200,000 gallons to 742,000 gallons.

PREVIOUS ACTIONS: At the December 20, 2006 Council meeting, Council tabled the item to January 17, 2007. At the January 17, 2007 Council meeting, Council table the item to February 7, 2007.

CONCURRENCES: n/a

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account Name:

If no, amount needed: \$

What account will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S): Motion to approve the resolution

Attachment(s): Resolution, memorandum of agreement (Exhibit A), R-99-220 (Exhibit B0

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT TO MODIFY BULK WATER AND SEWAGE USER AGREEMENT BETWEEN THE TOWN OF DAVIE AND FERNCREST UTILITIES TO PROVIDE BULK WATER AND SEWAGE SERVICE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie owns and operates a water producing and distribution facility and a sewage collection and treatment facility located within Town; and

WHEREAS, Ferncrest Utilities, Inc. is a private utility company with its service area located within and adjacent to the corporate limits of the Town; and

WHEREAS, to better service the customers of Ferncrest Utilities, Inc., Ferncrest has requested that the Town to modify the existing a Bulk Water and Sewage User Agreement; and

WHEREAS, the Town is agreeable to providing said service and wishes to authorize the Mayor to enter an agreement providing for same, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the Memorandum of Agreement to modify Bulk Water and Sewage User Agreement between the Town of Davie and Ferncrest Utilities, Inc., a copy of which is attached hereto as Exhibit "A".

SECTION 2. The appropriate Town officials are authorized to take all necessary actions to implement the Agreement.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2007

MEMORANDUM OF AGREEMENT TO MODIFY BULK WATER AND SEWER AGREEMENT

This Memorandum of Agreement ("Modification Agreement") between the Town of Davie, a municipal corporation of the State of Florida, ("Davie") and Ferncrest Utilities, Inc., a Florida Corporation, ("Ferncrest") dated this _____ day of February 2007 establishes a 30-month modification of the Bulk Water and Sewage User Agreement between Davie and Ferncrest (the "Bulk Agreement"), a copy of which is attached hereto and incorporated herein by reference, for the purpose of temporarily increasing the average potable water flow to Ferncrest from 200,000 gallons per day per month to 730,000 gallons per day average per month.

This Modification Agreement is entered into because Davie and Ferncrest have been discussing the possible purchase of Ferncrest by Davie. In order to comply with new State water quality standards, Ferncrest must install a costly new treatment system, an expense that is contrary to the best interest of Davie and Ferncrest if Davie purchases Ferncrest.

As an alternative to adding new water treatment technology while the purchase and sale negotiations continue, Ferncrest can meet the new water quality standards by supplying all of its customers with water purchased from Davie. In order to meet the needs of all of Ferncrest's customers as well as Davie's current and anticipated new customers during the 30-month period, Davie will need to increase withdrawals from the North Wellfield above the current Consumptive Use Permit ("CUP") limit.

In order to allow the purchase and sale negotiations between Davie and Ferncrest to proceed without placing Davie, Ferncrest, or their respective customers at a disadvantage, Davie and Ferncrest hereby agree to the following:

1. Davie will apply to the South Florida Water Management District ("SFWMD") to temporarily increase by 271 million gallons per year which is 742,000 gallons per day ("gpd") average the North Wellfield withdrawals under the current CUP for a period of 30 months;
2. Ferncrest will apply to the SFWMD to temporarily reduce withdrawals under its CUP by 742,000 gpd average for a period of 30 months;
3. The rate Ferncrest shall pay Davie shall be the same rate charged Town of Davie customers. Should Davie go to a tiered rate structure, the tiers used to determine the rate charged to Ferncrest will be based on the Ferncrest Utility area's average consumption per unit;
4. This Modification Agreement amends for 30 months the Service Area defined in the Bulk Agreement to include Ferncrest's entire service area;
5. This Modification Agreement increases for 30 months the maximum average monthly flow to Ferncrest under the Bulk Agreement from 200,000 gpd to 730,000 gpd average, and Ferncrest can not exceed this amount; and,
6. For the proposed 30-month period, this Modification Agreement establishes for customers of Ferncrest a service priority equal to direct customers of Davie.

This Agreement shall inure to and be binding upon the successors of each of the parties hereto.

All notices required pursuant to this Agreement shall be properly given if mailed by the United States registered or certified mail addressed to the party to which notice is to be given at the following respective addresses:

Town of Davie
Attn: Town Administrator
6591 Orange Drive
Davie, Florida 33314

Ferncrest Utilities, Inc.
3015 SW 54th Avenue
Fort Lauderdale, FL 33314

with a copy to:
Kenneth S. Cohen

with a copy to:
H. Collins Forman, Jr., Esq.
H. Collins Forman, Jr., P.A.
1323 S.E. Third Avenue
Fort Lauderdale, FL 33316

This Agreement may be amended, changed, voided or annulled any time by joint consent of the parties in writing.

This Agreement shall not become effective until:

1. A resolution has been adopted by each of the parties hereto approving this Agreement and authorizing its execution; and,
2. The South Florida Water Management District Governing Board approves a temporary 30-month increase in the permitted withdrawal of water from Davie's North Wellfield by 271 million gallons per year which is 742,000 gallons per day ("gpd") average and a 30-month decrease in the permitted withdrawal of water from the Ferncrest wellfield by 742,000 gpd.

IN WITNESS WHEREOF, Seller has caused this Agreement to be signed by its Mayor and attested by its Town Clerk and its Corporate Seal to be affixed, and approved by the Town Attorney, and Consumer has caused this Agreement to be signed by its _____ and _____, and attested by the _____, and its Corporate Seal to be affixed, and approved by its Attorney, in duplicate, the day and year above written.

TOWN OF DAVIE

By: _____
Mayor:

(Corporate Seal)

Attest:

Town Clerk:

FERNCREST UTILITIES, INC.

By: _____
By: Robert V. Salerno

(Corporate Seal)

Attest:

Title:

Exhibit B

RESOLUTION NO. R-99- 220

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A BULK WATER AND SEWAGE USER AGREEMENT BETWEEN THE TOWN OF DAVIE AND FERNCREST UTILITIES TO PROVIDE BULK WATER AND SEWAGE SERVICE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie owns and operates a water producing and distribution facility and a sewage collection and treatment facility located within the Town; and

WHEREAS, Ferncrest Utilities, Inc. is a private utility company with its service area located within and adjacent to the corporate limits of the Town; and

WHEREAS, to better service the customers of Ferncrest Utilities, Inc., Ferncrest has requested that the Town provide water and sewage service pursuant to a Bulk Water and Sewage User Agreement; and

WHEREAS, the Town is agreeable to providing said service and wishes to authorize the Mayor to enter an agreement providing for same, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the above recitations are true and correct.

SECTION 2. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the Bulk Water and Sewage User Agreement between the Town of Davie and Ferncrest Utilities, Inc., a copy of which is attached hereto as Exhibit "A".

SECTION 3. The appropriate Town officials are authorized to take all necessary actions to implement the Agreement.


SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 7th DAY OF JULY, 1999.



MAYOR/COUNCILMEMBER

ATTEST:



TOWN CLERK

APPROVED THIS 7th DAY OF JULY, 1999.

R-99-/Ferncrest Bulk Wtr Agmt

BULK WATER AND SEWAGE
USER AGREEMENT

THIS AGREEMENT, made and entered into this 7 day of July, 1999,
by and between:

Town of Davie, a municipal corporation of the State of
Florida, herein called the "Seller",

and

Ferncrest Utilities, Inc., a Florida Corporation, hereinafter
called the "Consumer",

WITNESSETH

WHEREAS, the Seller in its proprietary capacity, owns and operates a water producing and distribution facility and a sewage collection and treatment facility, collectively referred to as "Utility", and is in a position to service the Consumer; and

WHEREAS, the Consumer in its proprietary capacity, desires to purchase from Seller water to be used in Consumer's distribution system and to return sewage to Seller to be treated for servicing Consumer's customers, upon terms mutually agreeable;

NOW THEREFORE, for and in consideration of the premises and the sum of One Dollar (\$1.00) cash in hand paid by the Consumer to the Seller, receipt whereof is hereby acknowledged, and other good and valuable consideration, IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

(1) The Seller agrees to sell to the Consumer and the Consumer agrees to buy from the Seller water for resale to the customers of the Consumer, and the Seller agrees to accept untreated sewage and the Consumer agrees to pay for the treatment of the sewage from the same citizens and customers of the Consumer, under the terms and conditions set forth herein.

(2) All water delivered by the Seller shall be clean, potable water, meeting all current Federal, State and Local regulations in effect for the Utility at the time of transmission, relating to the quality of water as such Regulations may apply during the life of this Agreement. Failure of the Seller to provide water of the quality required by this paragraph shall be deemed a breach of this agreement, however, an allegation of failure to meet any such Regulations which is challenged by the Seller, shall not be deemed a breach of the Agreement unless there is a final finding after exhaustion of any appeals that there has, in fact, been non-compliance with said Regulations.

(3) During the term of this Agreement, the Seller will undertake to deliver water to the Consumer in such quantities as are required by the Consumer for resale by the Consumer to its customers in the areas hereinafter described, and subject to the conditions herein contained, but only after proper water meter or master water meters are installed. The maximum average flow shall be 200,000 gallons per day per month. However the Seller does not bind itself during periods of water shortage resulting from an emergency condition to do more than deliver water to said metering station in such quantities and pressure as are available throughout the Town. In the event it should become necessary for the Seller to adopt regulations for conservation of water during such time of emergency, the Consumer agrees that it will adopt and use reasonable efforts to enforce in the areas covered by this Agreement the same regulations for conservation of water during such time of emergency.

(4) The areas to be serviced by Consumer are situated in Broward County, Florida, and shall be referred to as "Service Area" for the purpose of this Agreement. The Service Area is described as follows:

Areas in the corporate limits of the Town of Davie east of the Florida Turnpike and north of Oakes Road.

(5) There shall be water meters installed at points mutually agreeable, through which all water provided to Consumer shall be supplied, and all water furnished by

Seller shall be metered through such meters. The Consumer shall, at its own expense, procure and install a water meter or water meters, the type of such meters to be approved by, and the installation thereof to be approved by the Seller or its authorized agents. The sewage connection point shall be at a mutually agreeable location and its installation shall be at the sole expense of the Consumer and approved by the Seller or its authorized agents. After installation, the Consumer will, at its own expense, operate and maintain the water meters and downstream distribution lines and the sewage collection lines.

(6) The Consumer shall own the water meters. The meters shall be of standard make and type, pursuant to AWWA standards, installed in a readily accessible location with checking or calibration devices, and the installation shall indicate flow with an error not to exceed plus or minus three percent of full scale reading. If found to be in error exceeding three percent of true accuracy, the meter shall be recalibrated to the satisfaction of the parties hereto. If such error of more than three percent is discovered, bills for the next period following the prior meter accuracy check shall be adjusted to reflect the quantity of over-read or under-read exceeding three percent. In calculating such billing adjustment it will be assumed that the meter inaccuracy existed for one-half of the entire time interval between meter accuracy checks, not to exceed twelve (12) months. The billing adjustment shall be made at the same rate established in accordance with Section (9) hereinafter, but the volume used in the billing calculations shall be adjusted as described above.

The Seller may request and the Consumer agrees to perform a meter accuracy check at any reasonable time acceptable to both parties. The meter accuracy test will be required at least once every two years. If the meter is found to be in error exceeding three percent true accuracy, it shall be recalibrated as described above and the entire cost for such checking and recalibration shall be paid for by the Consumer.

(7) The water furnished by the Seller hereunder shall be delivered to the Consumer at the points of delivery (meter locations) at a minimum head of one hundred (100) feet (+44PSI) except during fire demand. The Seller shall not be responsible for water hammer in any of the pipe lines of the Consumer nor shall

the Seller be responsible for meeting any demands for water other than that required by the terms of this Agreement. It shall be the obligation and duty of the Consumer to carry the water at its own expense from each point of delivery to the place or places of ultimate use and, in so doing, to supply and impart to the water adequate pressure as may be necessary to provide adequate pressure at all points beyond such point of delivery, in consequence whereof the Seller shall not be responsible for insufficient pressure, nor be required to correct any fluctuation in pressure, occurring beyond any such point of delivery.

(8) The sewage to be delivered by the Consumer to the Seller shall be untreated wastes only from the Consumer's customers who are recipients of the Sellers water. It shall be the Consumer's responsibility to collect and transmit the sewage to the agreed point of sewage connection.

(9) The water rates to be charged by the Seller to the Consumer herein shall be a user rate of \$1.12 per 1,000 gallons. The rates may be adjusted to the Consumer as Seller adjusts its rate structure for all customers of Sellers service. At the time of execution of this agreement, the differential of rates between retail customers and Consumer is \$0.25 per 1,000 gallons. It is the intention of the parties that any future rate adjustments will result in the same differential of rates so that the Consumer's rates are \$0.25 less per 1,000 gallons than the rate to retail customers. The sewage rates to be charged by the Seller to the Consumer herein shall be a user rate of 100% of the water rate @ \$1.46 per 1,000 gallons. The rates may be adjusted to the Consumer as Seller adjusts its rate structure for all customers of Sellers service. It is the intention of the parties that any future rate adjustments will result in the same differential of rates so that Consumer's rates are \$0.25 less per 1,000 gallons than the rate to retail customers.

(10) Readings of each water meter at all points of delivery shall be taken by the Consumer on or about the fifteenth day of each month and shall be used for monthly billing purposes under the provision of this section.

The Seller shall render monthly statements for water furnished to each meter and the Consumer shall pay promptly all statements furnished by Seller.

(11) Seller shall obtain from the State Board of Health and the Broward County Department of Natural Resource Protection such construction and operation permits or other data as may be required for any addition or extension of seller's system within the Service Area.

(12) Water sold to Consumer hereunder will be supplied from Seller's water producing facilities and will be of substantially the same quality and at the same pressure at the point of connection as the water furnished by Seller to its consumers within the Town limits of Seller, and said pressure shall not be below the minimum provided in Section (7).

(13) Sewage treatment service purchased by Consumer shall include full responsibility of Seller for compliance with all applicable Federal, State, Town of Davie and County regulations regarding treatment criteria and operation.

(14) Any temporary or continuing cessation of the service by the Seller caused by an Act of God, fire, strike, casualty, necessary maintenance work, breakdown of or injuries to machinery, pumps or pipelines, civil or military authority, insurrection, riot, or any other causes, whether or not of the same kind as enumerated herein, shall not constitute a breach of the Agreement on the part of the Seller, and the Seller shall not be liable to the Consumer for any damage resulting from such cessation of service. The Seller shall use due diligence in the operation and maintenance of its water supply and transmission facilities; however, the Seller shall not be responsible to the Consumer for any interruption of service due to causes beyond the Seller's control not due to the negligence of the Seller. All of the provisions of this Section shall apply equally to obligations of the Seller and the Consumer under this Agreement.

(15) Any controversy or claim arising out of this Agreement which cannot be amicably resolved by the parties shall be voluntarily submitted to arbitration by

agreement of both parties. If both parties do not agree to arbitration, then either party can proceed with litigation without having to first obtain an Order of Arbitration.

(16) The purchase and sale of water and sewer treatment services pursuant to this Agreement shall commence thirty (30) days after the Consumer notifies the Seller in writing that it is able to accept water at the point of connection, and shall continue until terminated in the following manner. The terminating party, either the Seller or the Consumer, shall give the other party hereto twelve (12) months notice of its intention to terminate this Agreement. At the expiration of the 12 month notice period the agreement shall be deemed terminated. Such notices shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the party entitled to such notice at the address specified in paragraph numbered (18) of this Agreement.

(17) This Agreement shall inure to and be binding upon the successors of each of the parties hereto.

(18) All notices required pursuant to this Agreement shall be properly given if mailed by United States registered or certified mail addressed to the party to which notice is to be given at the following respective addresses:

Town of Davie
Attn: Town Administrator
6591 Orange Drive
Davie, Florida 33314

with a copy to:

Barry Webber

Ferncrest Utilities, Inc.

3015 SW 54th Ave.
Ft. Lauderdale, FL 33314

with a copy to:

H. Collins Forman, Jr., Esq.
H. Collins Forman, Jr., P.A.
1323 SE Third Ave
Ft. Lauderdale, FL 33316

(19) This Agreement may be amended, changed, voided or annulled any time by joint consent of the parties in writing.

(20) This Agreement shall not become effective until a resolution has been adopted by such of the parties hereto approving this Agreement and authorizing its execution.

IN WITNESS WHEREOF, Seller has caused this Agreement to be signed by its Mayor and attested by its Town Clerk and its Corporate Seal to be affixed, and approved by the Town Attorney, and Consumer has caused this Agreement to be signed by its _____, and attested by the _____, and its Corporate Seal to be affixed, and approved by its Attorney, in duplicate, the day and year above written.

TOWN OF DAVIE

By _____
Mayor

(Corporate Seal)

Attest: _____

Town Clerk

FERNCREST UTILITIES, INC.

By _____
Robert V. Salerno, President

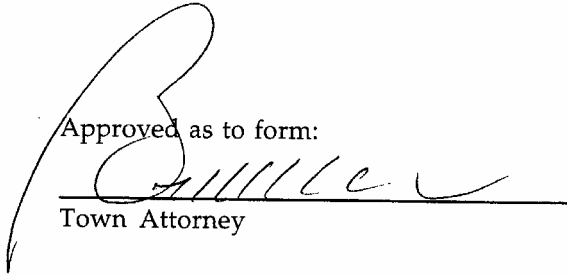
(Corporate Seal)

By _____

Attest: _____

Attorney for Ferncrest Utilities, Inc.

Approved as to form:


Town Attorney